



**WISCONSIN SUPREME COURT
WEDNESDAY, MARCH 30, 2005
1:30 p.m.**

04-3179 Clean Wisconsin, Inc., et. al v. Public Service Commission, et. al

This case came to the Wisconsin Supreme Court on a petition to bypass, meaning that the petitioners asked the Supreme Court (and the Court agreed) to take the case directly from the trial court without a hearing before the Court of Appeals. This is an appeal of a decision from Dane County Circuit Court, Judge David T. Flanagan presiding.

This is the high-profile dispute between environmentalists and the state's Public Service Commission (PSC), which approved a plan to build two coal-fired power plants on the shore of Lake Michigan in Oak Creek. The Supreme Court will determine whether the \$2.15 billion project, the largest, most expensive generating plant ever built in Wisconsin, may proceed.

Here is the background: On Feb. 1, 2002, WE Energies applied to the PSC for permission to build these plants. On Nov. 10, 2003, the PSC held hearings on the proposal, considered written materials, and then approved the application, subject to certain conditions. Construction was set to begin on May 1, 2005, and opening was set for May 2009 and May 2010.

Five litigants, including Clean Wisconsin, Inc. (formerly known as Environmental Decade), S.C. Johnson & Son, Inc., Calpine Corporation (a wholesale producer of electrical power), the City of Oak Creek, and the Town of Caledonia filed petitions asking for judicial review of the PSC ruling. They expressed concern about the environmental impact of these plants, the effect on competition, and the cost of pollution abatement in the communities near the plant. The petitions were consolidated and heard in the Dane County Circuit Court. The judge concluded that the PSC was too quick to approve the proposal, pointing out that WE had not been required to take out the necessary permits, study alternative locations for the plant, or consider alternative fuels, as state law requires.¹ He ordered the PSC back to the drawing board.

As noted, the case bypassed the Court of Appeals.

In their filings with the Supreme Court, WE Energies and the PSC express concern about energy supply and cost. They say that delay of this plant might mean that Wisconsin's energy system soon will not be able to meet the demands of the state's residents, and point out that a coal-fired generator plant has not been approved in Wisconsin since 1980, and that Wisconsin's energy demand is expected to grow by the equivalent of one major new power plant every two years. They also point out that the contract for design and construction of the plant requires a green light by July 1, 2005 (a renegotiation from the original May 1, 2005, deadline) or the contract will need to be renegotiated, which, they say, could mean substantially increased costs that would be passed along to consumers.

Johnson and Clean Wisconsin, on the other hand, argue that the delay is WE Energies' own fault for not adequately following the application rules. They also

¹ Wis. Stat. § 196.491

characterize the concerns about energy supply and cost, and about Wisconsin's ability to attract new business without a guarantee against power outages, as overblown. They express concerns about the environmental impact of the project and about the possible dampening effect on efforts to advance renewable energies.

The Supreme Court will decide whether the Oak Creek project will move forward.